

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 29, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-0658

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

IN RE THE MARRIAGE OF:

CAROLYN A. SMILEY,

Petitioner-Appellant,

v.

WILLIAM A. SMILEY, III,

Respondent-Respondent.

APPEAL from an order of the circuit court for Vernon County:
MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Carolyn Smiley appeals from an order modifying William Smiley's child support obligation by requiring her to pay a substantial part of his physical placement expenses. She contends that the trial court based the order on an incorrect legal standard. We disagree and therefore affirm.

Carolyn received primary physical placement of the parties' two children when she divorced William. He, in turn, received periods of physical placement each week. His child support obligation was established at 25% of his gross income of approximately \$60,000 per year.

In 1993, Carolyn left Wisconsin and her full-time job to accompany her fiance to New Mexico. William stipulated to the move in exchange for a revised physical placement schedule allowing for less frequent but more extended visits. The parties failed to agree on whether William's child support should be reduced to cover the increased expenses of physical placement, and the issue was scheduled for a hearing.

The court heard evidence that Carolyn was not employed and that she and the children were living, rent-free, in her fiance's \$300,000 home. His yearly income was estimated at \$250,000. William presented evidence that Carolyn's relocation would cost him several thousand dollars in increased yearly physical placement expenses, including approximately \$4,500 per year for flying the children from New Mexico to Minneapolis and back.

The trial court found a substantial change of circumstances consisting primarily of William's greatly increased expenses and secondarily of the children's enhanced standard of living after moving to New Mexico, given the improvement in Carolyn's total economic circumstances. The resulting order reduced William's child support obligation to 20% of his gross income and required Carolyn to pay the children's yearly airfare expenses. Carolyn agreed to the percentage reduction. Her appeal concerns the airfare expenses, which Carolyn believes should be equally divided.

A substantial change in circumstance allows the trial court to modify a child support award. Section 767.32(1), STATS. We will reverse a decision modifying child support only for an erroneous exercise of discretion. *Abitz v. Abitz*, 155 Wis.2d 161, 174, 455 N.W.2d 609, 614 (1990). A court properly exercises its discretion when it articulates a reasoned decision based on facts of record and the correct legal standards. *Id.* at 174, 455 N.W.2d at 615.

Section 767.32(1), STATS., 1991-92, provided in relevant part that: "Any change in child support because of alleged change in circumstances shall take into consideration each parent's earning capacity and total economic circumstances." Before the hearing in this matter, the legislature revised § 767.32(1) to remove the quoted language, providing instead that a child support revision "may be made only upon a finding of a substantial change in circumstances." Carolyn argues that by this amendment, the Wisconsin legislature has removed the factor of "total economic circumstances" in determining whether to make a revision in child support. She further argues that by relying on the total-economic-circumstances standard, the trial court applied an outdated and therefore erroneous legal standard.

We disagree. Although "total economic circumstances" is no longer a factor that a trial court must take into consideration, it remains one that a trial court may consider in its discretion. Section 767.32(1)(c), STATS., provides that in determining a substantial change of circumstances, a trial court may consider changes in the child's needs and the payer's earning capacity, and any other factor the court deems relevant. Here, the trial court reasonably determined that Carolyn's enhanced economic circumstances allowed her to bear a larger proportion of the physical placement expenses than she was willing to pay. The court properly exercised its discretion in partially basing its decision on that factor.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.